

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;
Sudeen G. Kelly, Marc Spitzer,
and Philip D. Moeller.

KIAC Partners	Docket No. ER06-741-001
Nissequogue Cogen Partners	Docket No. ER06-742-001
Carville Energy LLC	Docket No. ER06-749-001
Morgan Energy Center, LLC	Docket No. ER06-750-001
Columbia Energy LLC	Docket No. ER06-751-001
Pine Bluff Energy, LLC	Docket No. ER06-752-001
CPN Pryor Funding Corporation	Docket No. ER06-753-001
Auburndale Power Partners, L.P.	Docket No. ER06-754-001
Calpine Gilroy Cogen, L.P.	Docket No. ER06-755-001
Los Medanos Energy Center LLC	Docket No. ER06-756-001

ORDER GRANTING REHEARING

(Issued July 28, 2006)

1. In this order the Commission grants the request of KIAC Partners, Nissequogue Cogen Partners, Carville Energy LLC, Morgan Energy Center, LLC, Columbia Energy LLC, Pine Bluff Energy, LLC, CPN Pryor Funding Corporation, Auburndale Power Partners, L.P., Calpine Gilroy Cogen, L.P., and Los Medanos Energy Center LLC (collectively, Calpine Entities) for rehearing of the Commission's April 24, 2006 Order granting the Calpine Entities market-based rate authority.¹

Background

2. Each of the Calpine Entities is a qualifying facility (QF) that, by virtue of its QF status, was previously exempt from sections 205 and 206 of the Federal Power Act (FPA).² Pursuant to Order No. 671, the Calpine Entities are now subject to sections 205

¹ *KIAC Partners*, Docket No. ER06-741-000 (Apr. 24, 2006) (unpublished letter order) (April 24 Order).

² 16 U.S.C. §§ 824d and 824e (2000).

and 206 of the FPA under section 292.601(c)(1) of the Commission's regulations as revised.³

3. In the April 24 Order, the Commission granted the application for market-based rate authority of the Calpine Entities. As part of the grant of market-based rate authority, the Commission granted the Calpine Entities the same waivers and authorizations granted to other entities with market-based rate authorization, including blanket authorization under Part 34 of the Commission's regulations for all future issuances of securities and assumptions of liability. The Commission denied the Calpine Entities waiver of the full requirements of Part 45 of the Commission's regulations.

4. On May 24, 2006, the Calpine Entities filed a request for rehearing of the April 24 Order. The Calpine Entities specifically request that the Commission clarify that the Calpine Entities: (1) did not request blanket authorization under Part 34 of the Commission's regulations or waiver of the requirements of Part 45 of the Commission's regulations; and (2) are exempt from Commission regulation under Parts 34 and 45 because they, as QFs, are exempt from sections 204 and 305(b) of the FPA.⁴

Discussion

5. We will grant the Calpine Entities' request. The Calpine Entities, we note initially, did not request blanket authorization under Part 34 of the Commission's regulations or waiver of the full requirements of Part 45 of the Commission's regulations. The Calpine Entities are not subject to the requirements of Parts 34 and 45 of the Commission's regulations because the Calpine Entities, pursuant to section 292.601 of the Commission's regulations,⁵ are exempt from sections 204 and 305(b) of the FPA. As the Calpine Entities state in their filing, while Order No. 671 removed the exemptions from sections 205 and 206 of the FPA for certain QFs and QF sales, it did not change the exemptions from FPA sections 204 and 305(b); sections 204 and 305(b) of the FPA are implemented through Parts 34 and 45, respectively, of the Commission's regulations. Therefore, because the Calpine Entities are, pursuant to the Commission's regulations,

³ The Commission revised the exemptions available to QFs pursuant to 18 C.F.R. § 292.601(c)(1) (2006) in Order No. 671. *Revised Regulations Governing Small Power Production and Cogeneration Facilities*, Order No. 671, 71 Fed. Reg. 7,852 (Feb. 15, 2006), FERC Stats. & Regs. ¶ 31,203 (2006).

⁴ 16 U.S.C. §§ 824c and 825d(b) (2000).

⁵ 18 C.F.R. § 292.601 (2006).

exempt from sections 204 and 305(b) of the FPA, they are necessarily also exempt from Parts 34 and 45 of the Commission's regulations.⁶

The Commission orders:

The Calpine Entities' request for rehearing is hereby granted, as discussed in the body of this order.

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.

⁶ It should be noted that should the Calpine Entities relinquish or lose their QF status at some point in the future, they would no longer be exempt from Parts 34 and 45 of the Commission's regulations. In this event, while they could subsequently request, as a non-QF entity, blanket authorization under Part 34 for the issuance of securities and the assumption of liabilities, such a request with regard to Part 45 would be denied. The Commission has stated that it would no longer grant waivers of the full requirement of Part 45 in orders granting market-based rate authority. *See Commission Authorization to Hold Interlocking Positions*, Order No. 664, 70 Fed. Reg. 55,717 (Sept. 23, 2005), FERC Stats. & Regs. ¶ 31,194, at P 34 (2005), *order on reh'g*, Order No. 664-A, 114 FERC ¶ 61,142 (2006).